

ATTACHMENT B

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

STUART LEVENTHAL 2001 IRREVOCABLE
TRUST and STUART LEVENTHAL, individually and
in his capacity as trustee of the Stuart Leventhal 2001
Irrevocable Trust,

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-04492 (SMB)

**EXPERT REPORT OF
MATTHEW B. GREENBLATT, CPA/CFF, CFE
SENIOR MANAGING DIRECTOR
FTI CONSULTING, INC.**

**PRINCIPAL BALANCE CALCULATION
AS APPLIED TO
THE LEVENTHAL DEFENDANTS**

February 22, 2016

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I. INTRODUCTION

1. As described in my Expert Report regarding the Methodology for the Principal Balance Calculation dated November 15, 2012 (the “Principal Balance Calculation Report”), FTI Consulting, Inc. (“FTI”) was retained by Baker & Hostetler LLP, on behalf of the Trustee, to, among other things, reconstruct the books and records of BLMIS. I am a Senior Managing Director at FTI. Additional information regarding my professional experience and recent testimony is included in my Curriculum Vitae annexed hereto as **Exhibit 1**.

2. As part of FTI’s reconstruction of the books and records of BLMIS, chronological listings of all cash and principal transactions for every BLMIS customer account were compiled. These chronological listings provided the foundation to calculate every BLMIS account holder’s principal balance on a daily basis for all dates from April 1, 1981 through December 11, 2008 (the “Principal Balance Calculation”).

3. The Principal Balance Calculation Report explains the methodology of the Principal Balance Calculation and describes the relevant documents and data that were maintained by BLMIS. Accordingly, this report should be read in conjunction with the Principal Balance Calculation Report.¹

4. This report specifically applies the methodology of the Principal Balance Calculation to the BLMIS account associated with Stuart Leventhal 2001 Irrevocable Trust and Stuart Leventhal (collectively, the “Defendants”), in the above-captioned litigation, and provides a description of the cash and principal activity in the BLMIS accounts impacting the Principal Balance Calculation for BLMIS Account 1CM940 (the “Leventhal Account”).

5. This report has been prepared in connection with the above-captioned litigation and is to be used only for the specific purposes of this lawsuit. It is not to be used for any other purpose without the express written consent of FTI. If called upon to testify in this matter, I intend to provide testimony regarding my analyses and conclusions consistent with this report. FTI is being compensated at a rate of \$554 per hour for my professional time incurred in performing the work necessary to prepare this report. FTI’s fees are not contingent on the conclusions reached in this report or the outcome of the above-captioned litigation.

¹ The opinions that I render in the Principal Balance Calculation Report, the documents that I considered in connection with that Report, and the accompanying Exhibits to that Report, are all incorporated by reference. All capitalized terms not defined herein shall have the meaning ascribed to them in the Principal Balance Calculation Report.

6. The documents and data that I considered in connection with this report are listed in **Exhibit 2**. I reserve the right to supplement my report based on any additional documents or information received.

II. DESCRIPTION OF ACTIVITY IN THE LEVENTHAL ACCOUNT AND THE TRANSACTIONS IMPACTING THE PRINCIPAL BALANCE CALCULATION

7. The Leventhal Account was maintained with BLMIS beginning in May 2005. Throughout its account history with BLMIS, the Leventhal Account had a total of 22 cash withdrawal transactions. In addition to these cash transactions, there was one inter-account transfer from BLMIS Account 1CM113 into the Leventhal Account.

8. The withdrawal transactions, as well as the inter-account transfer, all impacted the Principal Balance Calculation for the Leventhal Account. Each of these transactions was reflected on the Customer Statements between May 2005 and November 2008, and the Checkbook File² between December 1, 2008 and December 11, 2008.

9. As described in the Principal Balance Calculation Report, the amount of the transfer of funds from one BLMIS account to another BLMIS account (an inter-account transfer³) is limited to the amount of principal available in the *transferor's* account at the time of the transfer. Only the portion of the inter-account transfers between BLMIS accounts for which the transferor had actual principal could be transferred. As such, all inter-account transfers have been analyzed and the transferee's account has been credited only up to the amount of principal available in the transferor's account on the day of the inter-account transfer.

10. Thus, in order to perform the Principal Balance Calculation for the Leventhal Account, BLMIS Account 1CM113 was analyzed to determine the amount of principal available in that account that could be transferred into the Leventhal Account.

11. To determine the amount of principal available in BLMIS Account 1CM113, one additional account, BLMIS Account 1C0092 was analyzed because an inter-account transfer from this account impacted the principal balance of BLMIS Account 1CM113.

² See Principal Balance Calculation Report, ¶¶ 52-54 for a full explanation of the Checkbook File.

³ An inter-account transfer is defined as a non-cash transaction between BLMIS customer accounts in which no new funds entered or left BLMIS, but rather a book entry occurred at BLMIS to internally adjust the balances of those accounts. These book entries did not reflect any transfers of cash because there was no actual movement of cash. Rather, these inter-account transfers merely changed reported value in the purported "equity" maintained in the BLMIS customers' accounts. (See Principal Balance Calculation Report, ¶¶ 17, 27-28, 32-34.)

12. **Exhibit 3** to this report (Summary Schedule of Cash and Principal Activity in the Leventhal Account) provides a summary of the activity in the BLMIS accounts that impacted the Principal Balance Calculation for the Leventhal Account.

13. **Exhibits 4A-4C** to this report provide detailed schedules for the Principal Balance Calculation for BLMIS Accounts 1C0092, 1CM113, and the Leventhal Account, respectively.

A. Description of the Inter-Account Transfer From BLMIS Account 1C0092 Into BLMIS Account 1CM113

14. On January 4, 1993, BLMIS Account 1CM113 was opened with an inter-account transfer from BLMIS Account 1C0092 in the amount of \$360,707, as reflected on the Customer Statements.

15. BLMIS Account 1C0092 was a pooled account where Madoff commingled the funds of certain investors into one BLMIS customer account. As described more fully in the Principal Balance Calculation Report, prior to 1993, Madoff commingled the funds of a limited number of individuals into several pooled accounts. FTI performed further investigation and analysis to calculate the principal attributable to each account on a customer-by-customer basis consistent with the BLMIS documents and/or the Trustee's counsel's determination. (See Principal Balance Calculation Report, ¶28 n.9.)

16. Based upon available information, it was determined that the amount of the commingled funds to be attributed to the inter-account transfer from the pooled BLMIS Account 1C0092 into BLMIS Account 1CM113 was \$300,000, all representing principal. Therefore, the amount included in the Principal Balance Calculation as principal transferred out of BLMIS Account 1C0092 and into BLMIS Account 1CM113 was limited to the available principal amount of \$300,000. (See **Exhibit 4A** for the Detailed Schedule for the Principal Balance Calculation for BLMIS Account 1C0092; see also **Exhibit 4B** for the Detailed Schedule for the Principal Balance Calculation for BLMIS Account 1CM113.)

17. The principal amount of \$300,000 credited to BLMIS Account 1CM113 was supported by the records available to the Trustee – specifically, the Cohmad Cash Database.⁴ The Cohmad Cash Database was a database that monitored the amounts deposited and

⁴ At the direction of Trustee's counsel, I rounded to the nearest thousand the deposit amount in the Cohmad Cash Database of \$300,246 to \$300,000.

withdrawn by certain investors who were referred to BLMIS by employees of Cohmad Securities Corporation. (See **Exhibit 5** for an excerpt of the Cohmad Cash Database for BLMIS Account 1CM113.)

B. Summary of Activity in BLMIS Account 1CM113 and the Inter-Account Transfer Into the Leventhal Account

18. As discussed above, on January 4, 1993, BLMIS Account 1CM113 was opened with an inter-account transfer of \$300,000 of principal from BLMIS Account 1C0092. (See **Exhibits 4A** and **4B**.)

19. Subsequent to the initial inter-account transfer, there were four cash deposits⁵ via checks into BLMIS Account 1CM113 in the aggregate amount of \$750,000, all representing principal.

20. The one inter-account transfer and four cash deposits provided BLMIS Account 1CM113 with a total of \$1,050,000 of principal.

21. On May 2, 2005, there were two inter-account transfers from BLMIS Account 1CM113 into BLMIS Account 1CM941 and the Leventhal Account in equal amounts of \$2,691,646, as reflected on the Customer Statements. These transactions were both dated May 2, 2005, as reflected on the Customer Statements. As of that date, BLMIS Account 1CM113 had only \$1,050,000 of principal available that could be transferred. At the direction of Trustee's counsel and pursuant to correspondence in the customer file for BLMIS Account 1CM113, I divided that principal amount equally between both accounts.⁶ Applying that methodology, BLMIS Account 1CM941 and the Leventhal Account were each credited with \$525,000 of principal.⁷ The remaining balance of these reported inter-account transfers constituted fictitious profits. (See **Exhibit 4B**; see also **Exhibit 4C** for the Detailed Schedule for the Principal Balance Calculation for the Leventhal Account.)

⁵ These cash deposits exclude the line items on the Customer Statements related to a check for \$350,000 on July 3, 1996, because the check was cancelled on July 9, 1996. (See **Exhibit 4B**.)

⁶ According to correspondence dated April 26, 2005 between Stuart Leventhal and Frank Dipiscali, BLMIS Account 1CM113 was split equally into BLMIS Accounts 1CM941 and 1CM940 (the Leventhal Account). (See **AMF00244334**.)

⁷ See Principal Balance Calculation Report, ¶¶17, 27-28, 32-34 for a full explanation of inter-account transfers of principal between BLMIS customer accounts.

C. Description of the Inter-Account Transfer Into the Leventhal Account

22. On May 2, 2005, the Leventhal Account was opened with an inter-account transfer from BLMIS Account 1CM113 in the amount of \$2,691,646, as reflected on the Customer Statements. However, as discussed above, on the same day, there was another inter-account transfer from BLMIS Account 1CM113 into BLMIS Account 1CM941 in the same amount of \$2,691,646, as reflected on the Customer Statements. As discussed above, I divided that principal amount equally between both accounts. Applying that methodology, the Leventhal Account and BLMIS Account 1CM941 were each credited with \$525,000 of principal. The remaining balance of the reported inter-account transfers constituted fictitious profits. (See **Exhibits 4B and 4C.**)

23. In sum, the one inter-account transfer provided the Leventhal Account with a total of \$525,000 of principal. (See **Exhibit 3.**)

D. Description of the Cash Withdrawals Out of the Leventhal Account

24. Between May 2, 2005 and December 11, 2008, the Leventhal Account reflected a total of 22 cash withdrawals⁸ totaling \$3,140,000 – an amount which included both principal and fictitious profits.

25. The Principal Balance Calculation for the Leventhal Account demonstrates that between May 2, 2005 and December 11, 2008, \$3,140,000 was withdrawn from BLMIS, which consisted of \$525,000 of principal and an additional \$2,615,000 of funds withdrawn in excess of principal, representing fictitious profits. Within the two-year period prior to December 11, 2008, \$1,290,000 of fictitious profits was withdrawn from the Leventhal Account. (See **Exhibit 4C.**)

⁸ The BLMIS Checkbook File reflected a cash withdrawal via check from the Leventhal Account for \$5,000 dated December 9, 2008. However, that check did not clear, and therefore, the amount of the withdrawal was reversed in the Principal Balance Calculation for the Leventhal Account. (See **Exhibit 4C.**)

III. SIGNATURE AND RIGHT TO MODIFY

26. This report and the exhibits contained herein present my findings and the bases thereof. To the extent that any additional information is produced by any party, I reserve the right to incorporate such additional information into my report or to modify my report as necessary.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew B. Greenblatt", is written over a horizontal line.

Matthew B. Greenblatt, CPA/CFF, CFE
Senior Managing Director
FTI Consulting, Inc.

Dated: February 22, 2016

IV. LIST OF EXHIBITS

Exhibit 1 – Curriculum Vitae and Testimony of Matthew B. Greenblatt

Exhibit 2 – Documents Considered

Exhibit 3 – Summary Schedule of Cash and Principal Activity in the Leventhal Account

Exhibit 4A – Detailed Schedule for the Principal Balance Calculation for BLMIS Account

1C0092

Exhibit 4B – Detailed Schedule for the Principal Balance Calculation for BLMIS Account

1CM113

Exhibit 4C – Detailed Schedule for the Principal Balance Calculation for the Leventhal Account

Exhibit 5 – Excerpt of the Cohmad Cash Database for BLMIS Account 1CM113